

1 Troy P. Foster  
2 Megan Weides  
3 **The Foster Group, PLLC**  
4 518 East Willetta Street  
5 Phoenix, Arizona 85004  
6 Tel: 602-461-7990  
7 [tfoster@thefosterlaw.com](mailto:tfoster@thefosterlaw.com)  
8 *Attorneys for Plaintiff*

9 **IN THE UNITED STATES DISTRICT COURT**  
10 **FOR THE DISTRICT OF ARIZONA**

11 Jason Heffington, a married man, on  
12 behalf of himself and similarly-situated  
13 Arizona Department of Correction  
14 employees,

15 Plaintiff,

16 vs.

17 The Arizona Department of Corrections,  
18 David Shinn, Director of the Arizona  
19 Department of Corrections, in his official  
20 capacity; Charles Ryan, former Director of  
21 the Arizona Department of Corrections, in  
22 his official capacity and personally, John  
23 Hall, in his official capacity and  
24 personally; Gerald Thompson, in his  
25 official capacity and personally; and  
Wendy Eckles, in her official capacity and  
personally,

Defendants.

Case No.:

**COMPLAINT**

**(Jury Trial Demanded)**

For his Complaint against Defendants Arizona Department of Corrections (“DOC”),  
Director David Shinn, former Director Charles Ryan, Gerald Thompson, John Hall, and  
Eckles (“Individual Defendants”) (collectively referred to as “Defendants”), Plaintiff Jason  
Heffington (“Plaintiff” or “Class Representative”) alleges as follows:

**The Parties and Jurisdiction**

1. At all times relevant to this Complaint, Plaintiff resided in and is a citizen of Arizona.

2. At all times relevant to this Complaint, Plaintiff worked for the DOC.

3. The DOC is an agency of the State of Arizona.

4. In October 2019, Defendant Shinn became the Director of the DOC.

5. Prior to Defendant Shinn's appointment, Defendant Ryan was the Director of the DOC.

6. At all times relevant to this Complaint, Defendant Thompson was the Warden at the DOC's Lewis prison ("Lewis").

7. At all times relevant to this Complaint, Defendant Hall was a sergeant at the DOC's Lewis prison.

8. At all times relevant to this Complaint, Defendant Eckles was the Deputy Warden at the DOC's Perryville prison ("Perryville").

9. Upon information and belief, all of the Individual Defendants are residents and citizens of Arizona.

10. The Individual Defendants, as well as other yet unnamed managers, exercise managerial responsibility and substantial control over the terms and work conditions of the DOC's employees, including Plaintiff. Among other things, the Individual Defendants are individually and jointly authorized to hire, fire, discipline, supervise and control employee work schedules and conditions of employment, determine the rate and method of payment, administer leaves of absence, maintain employment records that may exist, and draft, implement, and enforce employee policies.

11. All allegations in the Complaint took place within the DOC facilities.

12. This Court has original jurisdiction because Plaintiff's claims raise federal questions pursuant to 28 U.S.C. § 1331.

13. Venue is properly before this Court.

**Officer Heffington's Application, Hire, Assignments, and Concerns Raised**

14. Plaintiff has been employed with the DOC for almost 14 years as a correctional officer.

15. Plaintiff originally applied for an assignment to the Perryville prison.

16. Plaintiff applied for the Perryville location because he believed that it was a safer facility to work in given the respective inmate populations.

17. Plaintiff expressly did not want to work in the Lewis prison because Plaintiff believed that there were significant safety issues for correctional officers that worked there.

18. Plaintiff was offered and accepted a position with the DOC at the Perryville facility.

19. Plaintiff remained at the Perryville facility until May 2019.

20. Plaintiff was transferred to the Lewis prison subsequent to engaging in protected activity outlined below.

21. At the time of his transfer, Plaintiff raised safety concerns about the Lewis prison.

22. Specifically, Plaintiff informed the DOC and DOC management, including Defendants Ryan and Eckles that he believed that conditions at Lewis were unsafe to work in.

23. Plaintiff informed the DOC and DOC management, including Defendants Ryan and Eckles that other employees were concerned about the safety of the work conditions at Lewis.

24. Plaintiff informed the DOC and DOC management, including Defendants Ryan and Eckles that he believed that his transfer was in retaliation for raising matters of public concern and engaging in other protected activity.

**Family Medical Leave Act: "Granted" But Thwarted**

25. Prior to his transfer, Plaintiff was eligible and qualified for intermittent leave under the Family Medical Leave Act ("FMLA") for self care ("self-care leave").

1           26. Prior to his transfer, Plaintiff was eligible and qualified for FMLA leave to  
2 care for his wife and the birth of his newborn child (“family leave”).

3           27. The DOC granted both of Plaintiff’s self-care and family leaves.

4           28. When he attempted to utilize the self-care leave, Plaintiff’s supervisors  
5 objected.

6           29. In March 2018, Plaintiff attempted to utilize his self-care leave.

7           30. On that occasion, his supervisor, Sergeant Reyes, denied Plaintiff’s request  
8 and informed Plaintiff that he could not utilize the leave.

9           31. The following day, Defendant Eckles met with Plaintiff about his request to  
10 use approved FMLA leave the previous day.

11           32. During that meeting, the Deputy Warden told Plaintiff that she did not believe  
12 that he needed to utilize his approved leave.

13           33. In fact, Defendant Eckles asked Plaintiff to “convince her” that he needed the  
14 leave.

15           34. On another occasion, Plaintiff’s supervisor, Sergeant Miller, wrote an incident  
16 report because Plaintiff utilized FMLA leave.

17           35. In that report, Sergeant Miller objected to Plaintiff’s use of the approved leave  
18 and required Plaintiff to write a report justifying the need for FMLA leave.

19           36. Sergeant Miller told Plaintiff that the DOC and his managers were “keeping a  
20 paper trail” on him because his leave was “bullshit.”

21           37. Subsequent to his use and attempted use of leave, and immediately prior to  
22 his transfer to Lewis, Plaintiff’s managers said that they needed to “get rid of him” because  
23 of his leave.

24           **A Long-Standing Custom and Practice: Interference, Denial, and Retaliation**

25           38. As a result, Plaintiff did not utilize his approved leave at times that he needed  
to, and was entitled to, take leave.

          39. Plaintiff objected to his supervisors’ and managers’ interference with his  
FMLA leave.

1           40. Plaintiff objected to his supervisors' and managers' retaliation for taking  
2 protected leave.

3           41. Plaintiff observed other employees that, upon information and belief, had  
4 protected FMLA leave treated in a similar manner.

5           42. Plaintiff witnessed conversations where DOC managers made disparaging  
6 comments about other employees' protected leave and saw interference with and retaliation  
7 for those employees' leave.

8           43. In fact, Plaintiff raised concerns with his managers and supervisors, including  
9 the Individual Defendants, about how the DOC administered FMLA leaves to all of its  
10 employees.

11           44. Plaintiff attempted to inform the Defendants that its interference with and  
12 administration of FMLA to all of its employees violated federal law.

13           45. Based upon his personal experience and observations at two DOC facilities,  
14 Plaintiff believes that the DOC has a longstanding practice and custom to deny and retaliate  
15 against employees that are eligible for FMLA leave.

**Familial Leave Retaliation**

16           46. In March 2018, Plaintiff informed the DOC and his managers that he and his  
17 wife were expecting the birth of their first child.

18           47. As such, Plaintiff applied for prospective leave to take care of his wife and  
19 child after the baby was born.

20           48. The DOC granted Plaintiff's leave.

21           49. Subsequent to the leave being granted, but before utilizing the leave,  
22 Plaintiff's supervisors retaliated against him.

23           50. Plaintiff was wrongfully accused of misconduct and transferred to Lewis.

24           51. Plaintiff complained about his mistreatment, both in writing and in person.

25           52. Plaintiff again raised concerns that the DOC was not administering leave in  
accordance with the law and its own policies and procedures.

1           53. Because of his familial leave, Plaintiff was targeted, wrongfully disciplined,  
2 and transferred. In addition, and as a result, Plaintiff was denied bonuses that others that  
3 had not taken protected leave received.

4                           **Smoking Him Out**

5           54. After his transfer to Lewis, Plaintiff raised safety concerns to DOC officials.

6           55. One such concern related to prisoners being permitted to smoke in the facility.

7           56. Upon information and belief, DOC policy prohibits prisoners from smoking  
8 inside the facility.

9           57. Prisoners, however, smoked, and continue to smoke, inside the facility.

10          58. This resulted in significant second-hand smoke that impacted not only the  
11 employees' health, but their ability to perceive and respond to risk.

12          59. Several employees shared their concerns with Plaintiff.

13          60. Plaintiff shared these concerns with the DOC, including Defendant  
14 Thompson.

15          61. This workplace safety issue was a matter of public concern.

16          62. Plaintiff told Defendant Thompson that he did not want to cause problems,  
17 but wanted to raise issues – both concerning his personal FMLA issues and the safety issues  
18 of general public concern.

19          63. Defendant Thompson responded that Plaintiff *was causing problems* by being  
20 “here” [in his office].

21          64. Defendant Thompson further stated that no one could take Plaintiff's  
22 concerns seriously because “you are so frail.”

23          65. Defendant Thompson then mocked Plaintiff for being jittery.

24          66. Plaintiff complained about Defendant Thompson's behavior to Human  
25 Resources.

          67. Upon information and belief, action was taken against Defendant Thompson  
for this incident.

1           68. Subsequently, and as a result of this, Plaintiff was retaliated against for  
2 leaving work due to illness.

3           69. In December 2019, Plaintiff informed his supervisor that he needed relief.

4           70. Plaintiff's supervisor granted the request and relieved him from duty.

5           71. However, on Plaintiff's way out of the facility, Defendant Hall stopped  
6 Plaintiff and asked "are you the one with FMLA issues?"

7           72. Plaintiff responded that he had been relieved, but declined to discuss his  
8 FMLA leave further.

9           73. Two weeks later, Plaintiff received a Notice of Investigation into his  
10 departure on that day.

11           74. The Notice is factually inaccurate; Plaintiff believes that inaccuracies were  
12 deliberately created in retaliation for his protected activities.

13           75. Plaintiff was informed that Defendant Thompson authorized the investigation.

14           76. Prior to his complaint to HR, Defendant Thompson told Plaintiff that should  
15 he have any issues with utilizing leave to contact him.

16           77. Plaintiff was disciplined in January 2020 for this incident.

17           78. Plaintiff believes that the investigation was in retaliation for taking prior  
18 protected leave and raising matters of public concern.

19                           **Other Public Concerns: Working for Free**

20           79. Plaintiff also raised concerns that correctional officers were not being paid as  
21 required under the Fair Labor Standards Act ("FLSA").

22           80. Specifically, Plaintiff and other employees, were required to spend a  
23 significant amount of time walking to the facility, going through security, and completing  
24 other tasks before being paid.

25           81. Further, Plaintiff and other employees, were required to spend a significant  
amount of time performing duties and being available for recall while off the clock at the  
end of their shifts all without being paid.





1 91. Plaintiff will fairly and adequately represent the Class Members. Plaintiff is a  
 2 current employee, has been employed with the DOC during the entire Violative  
 3 Period, and qualified for and took both familial and self-care leave under the FMLA.  
 4 Plaintiff has retained competent counsel who has experience in litigating collective  
 5 and class action matters that involve federal employment claims. As such, the Class  
 6 Members' claims will be fairly and adequately represented by Plaintiff and counsel.

7 92. A collective action is superior to other available methods for adjudicating claims  
 8 effectively and efficiently. The adjudication through a collective action will avoid  
 9 potentially inconsistent and conflicting results of the asserted claim for the  
 10 correctional officers that opt in. There will be no difficulty in managing the Class,  
 11 and a single adjudication of the claim will substantially benefit the Class Members  
 12 and the Court. Damages for individual Class Members are likely inadequate to  
 13 justify the cost of individual litigation especially in light of the fact that Class  
 14 Members are/were non-exempt employees with relatively lower income and  
 15 had/have serious medical conditions. As such, absent a collective action or  
 16 something similar, the DOC's willful violations of law inflicting significant damages  
 17 in the aggregate would go unremedied.

18 93. A collective action is also appropriate under 29 U.S.C. § 216(b) because the DOC  
 19 has acted or refused to act on grounds generally applicable to the Class Members,  
 20 such that final injunctive or declaratory relief is appropriate to the Class as a whole.

### **LEGAL CLAIMS**

#### **Count One: FMLA Self-Care (Interference and Retaliation) (All Defendants)** **(Injunctive Relief)**

21 94. Plaintiff reincorporates the allegations in paragraphs 1-93 as if fully set forth  
 22 here.

23 95. At all relevant times, the DOC had more than 50 employees.

24 96. At all relevant times, the DOC was an employer for purposes of the FMLA.  
 25

1           97. At all relevant times, Plaintiff had been employed with the DOC for more  
2 than one year and worked a sufficient amount of time as required by the FMLA.

3           98. At all relevant times, Plaintiff was eligible for leave under the FMLA.

4           99. Plaintiff had serious medical conditions that entitled him to leave under the  
5 FMLA.

6           100. The DOC granted Plaintiff's intermittent leave requests for self-care on  
7 multiple occasions.

8           101. Despite its policy to the contrary, the DOC (through its officials) had a  
9 longstanding practice and custom of interfering with Plaintiff's, and similarly-situated  
10 correctional officers', right to take protected leave.

11           102. Despite its policy to the contrary, the DOC (through its officials) had a  
12 longstanding practice and custom of retaliating against Plaintiff, and similarly-situated  
13 correctional officers, for exercising the right to protected leave.

14           103. The DOC failed to train or take other adequate safeguards to prevent its  
15 managers and supervisors from violating Plaintiff's, and similarly-situated correctional  
16 officers', rights under the FMLA.

17           104. Plaintiff is entitled to injunctive relief on behalf of himself and all similarly-  
18 situated DOC employees.

19           **Count Two: FMLA Familial Leave (Retaliation) (All Defendants) (Monetary Relief)**

20           105. Plaintiff reincorporates allegations in paragraphs 1-104 as if full set forth  
21 here.

22           106. Plaintiff was provided, and took, FMLA "family leave" for the birth of his  
23 child and to take care of his wife.

24           107. After he applied for the leave, but before he took it, the Defendants retaliated  
25 against him because of his protected family leave.

          108. When Plaintiff returned from protected leave, the Defendants retaliated  
against him because of the leave.

1           109. As a result of the retaliation and pretextual discipline, Plaintiff was deprived  
2 of promotional opportunities, bonuses, and additional wages.

3           110. Plaintiff is entitled to back pay, front pay, liquidated damages, and his  
4 reasonable attorneys' fees and costs.

5           **Count Three: First and Fourteenth Amendment Violations (§ 1983) (Against**  
6           **Defendants Shinn, Ryan, Thompson, and Eckles)**

7           111. Plaintiff reincorporates allegations in paragraphs 1-110 as if fully set forth  
8 here.

9           112. At all relevant times, Directors Shinn and Ryan were acting under color of  
10 State law, in their respective times of service.

11           113. At all relevant times, Warden Thompson was acting under color of State law.

12           114. At all relevant times, Deputy Warden Eckles was acting under color of State  
13 law.

14           115. As the highest ranking official during each's respective tenure, Defendants  
15 Shinn and Ryan were the highest-ranking officials of the DOC at various times during the  
16 relevant allegations.

17           116. In his role, Warden Thompson was the highest-ranking official supervising  
18 Plaintiff at the Lewis facility.

19           117. Moreover, Defendant Thompson had the authority to direct and oversee, and  
20 did direct and oversee, Plaintiff's work conditions at Lewis.

21           118. In her role, Deputy Warden Eckles had the authority to direct and oversee,  
22 and did direct and oversee, Plaintiff's work conditions at Perryville.

23           119. In their respective roles, Defendants Shinn, Ryan, Thompson, and Eckles  
24 were charged with ensuring the workplace was free from adverse actions for the proper  
25 exercise of speech, the violation of which infringes upon an employee's First Amendment  
rights under the United States Constitution.

          120. In their respective roles, Defendants Shinn, Ryan, Thompson, and Eckles  
were charged with ensuring the workplace was free from adverse actions for the proper

1 exercise of federally protected rights and Due Process and Equal Protection for utilizing  
2 those rights.

3 121. Plaintiff's complaints concerned his good faith belief that the DOC was  
4 violating the FMLA and FLSA as to all of all similarly-situated corrections officers.

5 122. In addition, Plaintiff's complaints concerned his good faith belief that the  
6 DOC's work conditions at Lewis were unsafe and violated similarly-situated corrections'  
7 officers rights.

8 123. Plaintiff's complaints raised matters of public concern.

9 124. Plaintiff had the right to voice matters of public concern, as protected by his  
10 First Amendment rights under the United States Constitution.

11 125. The DOC had a longstanding practice or custom of interfering with  
12 correctional officers' rights to take protected leave.

13 126. Similarly, the DOC had a longstanding practice or custom of retaliating  
14 against correctional officers that took protected leave.

15 127. The DOC failed to adequately train its managers and supervisors so as to  
16 implement procedural safeguards to prevent Constitutional violations.

17 128. This longstanding practice and custom violated Plaintiff's, and similarly-  
18 situated correctional officers', rights to Equal Protection and Due Process as guaranteed by  
19 the United States Constitution.

20 129. All of Plaintiff's rights, as articulated above, are clearly established and  
21 recognized.

22 130. Defendants Shinn, Ryan, Thompson, and Eckles all abused their respective  
23 positions given to them by the government while acting under the color of State law.

### 24 **Conclusion**

25 **THEREFORE**, Plaintiff respectfully requests the following relief:

- A. An award of back pay, front pay, and liquidated damages for Defendants'  
violations of the FMLA "family care" provisions;

- 1 B. Equitable relief against Defendants for its practice and custom of violating the  
2 FMLA's "self care" provisions by denying, interfering with, and retaliating  
3 against eligible employees for applying for, taking, or attempting to take such  
4 protected leave;  
5 C. Compensatory and punitive damages for the Individual Defendants' violations of  
6 civil rights pursuant to § 1983;  
7 D. An award of attorneys' fees and costs based upon the applicable provisions of  
8 federal and state law; and  
9 E. All other appropriate injunctive and equitable relief.

Dated this 14<sup>th</sup> day of January, 2020.

**The Foster Group, PLLC**

/s/ Troy P. Foster

Troy P. Foster

Megan Weides

518 East Willetta Street

Phoenix, Arizona 85004

*Counsel for Plaintiff*